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Supreme Court, U.S.
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No. 99-1331

In The

Supreme Court of the United States

JAMES F. LEWIS,

Petitioner,

v.

LEWIS & CLARK MARINE, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY BRIEF

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REPLY BRIEF

The Eighth Circuit enjoined petitioner from proceeding in state court even though the state court case was within both the single-claim and the excess fund exceptions to the rule of exclusive federal jurisdiction. Respondent has completely failed to demonstrate how dissolving the injunction would cause any prejudice – or even any potential prejudice – to its limitation rights. Respondent has failed to articulate any right to enjoin state court proceedings that is independent of its limitation rights. Respondent does not deny that there is only one claimant. Respondent does not deny that the value of that claim is less than the limitation fund. Yet, respondent avers that the Court of Appeals' decision is not a departure from controlling law. A brief examination of this assertion demonstrates that it is untenable.

The Eighth Circuit's decision conflicts with *Langnes v. Green*, 282 U.S. 531 (1931), in which this Court created an abstention doctrine in single-claimant limitation cases. The shipowner in *Langnes* not only sought, but had actually obtained, a federal court order exonerating it from liability. *Petition of Langnes*, 32 F.2d 284 (W.D.Wash.1929); and see *The Aloha (Green v. Langnes)*, 35 F.2d 447 (9th Cir. 1929), *rev'd sub nom. Langnes v. Green*, 282 U.S. 531 (1931). The presence of an exoneration claim did not sustain the injunction in *Langnes* and does not authorize a federal court to refuse to dissolve the injunction against the state court action. See also *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 149 (1957) (claimant allowed to litigate in state court even though vessel owner sought exoneration as well as limitation).

In reversing the refusal to dissolve the injunction, the *Langnes* Court held that "the plaintiff had the right to pursue his remedy in the state court unless the act providing for a limitation of liability clearly deprived him of it; [and] that where there was only a single claim there was no need for the adoption of the peculiar and exclusive jurisdiction of the admiralty court * * * ." *Langnes, supra,* 282 U.S. 531, 542.

The Eighth Circuit's analysis was based on the opposite presumption: that the single claimant was deprived of his state court action unless there was a conflict with the procedure in the federal court. The Circuit Court reasoned that there was no conflict because a non-jury case was not a saved remedy within the saving to suitors clause. This holding conflicts with this Court's previous determination that the saving to suitors clause of 28 U.S.C. § 1333(1) includes state court actions which do not seek jury trials. *Red Cross Line v. Atlantic Fruit Co.,* 264 U.S. 109 (1924); *Linton v. Great Lakes Dredge & Dock Co.,* 964 F.2d 1480, 1486-1487 (5th Cir. 1992).

The *Red Cross Line* holding is buttressed by the 1949 amendment to the statute which dispelled any contrary notion by substituting the phrase "any other remedy to which he is otherwise entitled" for "a common law remedy where the common law is competent to give it." 63 Stat. 101 (1949); and see Reviser's Note, H.Rep.No.308, 80th Cong., 1st Sess., p.A118 (1949). "Any other remedy" is a very broad phrase that encompasses at least petitioner's non-jury state court case.

Although respondent attempts to distinguish *Red Cross Line,* it admits that " 'judicial remedies conferred by statute' are saved remedies within the saving to suitors clause. *Red Cross Line,* 264 U.S. at 124." Brief In Opposition at 6. Yet respondent utterly fails to acknowledge that the state court case is a Jones Act case brought pursuant to 46 U.S.C. § 688. The remedy afforded by this statute is therefore saved.

Respondent attempts to distinguish *Linton v. Great Lakes Dredge & Dock Co.,* 964 F.2d 1480 (5th Cir. 1992) as a case not involving limitation. The issue in *Linton* was whether a non-jury Jones Act case filed in state court was within the saving to suitors clause. The Fifth Circuit held that it was; this holding does not depend on the presence or absence of a limitation proceeding. The Eighth Circuit's decision that a state court non-jury Jones Act case is not saved by the statute is in direct and irreconciliable conflict with *Linton.*

Respondent also attempts to distingish the Second Circuit's decisions in *Kreta Shipping S.A. v. Preussag International Steel Corp.,* 192 F.2d 41 (2d Cir. 1999) and *Curtis Bay Towing Co. v. Tug Kevin Moran, Inc.,* 159 F.2d 273 (2d Cir. 1947). Each of those cases held that the injunction against further proceedings in a non-jury case should be dissolved.

Respondent points out that *Kreta Shipping* declined to consider whether a non-jury case filed in Europe was within the saving to suitors clause. But respondent fails to reconcile the Eighth Circuit's decision in the instant case with the Second Circuit's holding that the limitation

injunction must be dissolved even when the underlying case is *not* within the saving to suitors clause.

> "The [Supreme] Court's decision was based instead principally on the perception that once the shipowner's right of limitation was protected and there was no need to marshal assets to apportion an inadequate fund among many claimants, the concursus injunction no longer served a valid purpose. Once, for that reason, the injunction is vacated, it does not matter whether a claimant takes advantage of its freedom from the injunction by bringing suit in a state court pursuant to the saving-to-suitors clause, or a foreign court – or elsewhere for that matter." 192 F.3d at 49.

Respondent acknowledges that *Curtis Bay* involved a non-jury proceeding in another federal court but offers no explanation for why that fact should distinguish *Curtis Bay* from the cause *sub judice*. Because Jones Act cases may be filed in either federal or state court this fact has little significance. Judge Hand's opinion is significant, however, in holding that "every claimant has a legally protected interest in choosing his forum, even though the method of trial be not changed if he is moved elsewhere." 159 F.2d at 276. The Eighth Circuit's analytical focus on a conflict based on the presence or absence of a jury trial is completely at odds with the rationale articulated by Judge Hand and followed by the Second Circuit.

That rationale was applied to the excess fund case by this Court in *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957). This Court declared that it is "crystal clear that the operation of the Act is directed at misfortunes at sea where the losses incurred exceed the value of the vessel

and the pending freight." 354 U.S. at 151. To enjoin the claimant from proceeding in state court in an excess fund case "would transform the Act from a protective instrument to an offensive weapon by which the shipowner could deprive suitors of their common-law rights even where the limitation fund is known to be more than adequate to satisfy all demands upon it. The shipowner's right to limit liability is not so boundless." *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152.

Because petitioner in this case stipulated that his claim was less than the value of the vessel, the excess fund exception is fully applicable. The Eighth Circuit's decision flies in the face of *Lake Tankers* and allows the vessel owner – even when its limitation rights have been fully satisfied – to deprive a claimant of his right to a state court adjudication. This is a serious conflict with a controlling decision of this Court that should be corrected.

Contrary to respondent's assertions, vessel owners lacked any right to seek exoneration until this Court adopted Admiralty Rule 56 in conjunction with its decision in *Norwich Company v. Wright*, 80 U.S. 104 (1871). *The Benefactor*, 103 U.S. 239, 243 (1880). In *The Benefactor*, the Court noted that Admiralty Rule 56, authorizing exoneration, was a departure from the English practice which had required the vessel owner to concede its fault before claiming the benefit of limitation. 103 U.S. 239, 243. Thus, for twenty years a vessel owner seeking to limit liability lacked any means to challenge that liability in the first instance. *The Benefactor*, 103 U.S. 239, 243.

The lynchpin of the *Lewis & Clark* holding is that "the liability of the shipowner is by no means assumed by the Limitation Act." 196 F.3d 900, 908. This is manifestly incorrect. Under the prior English rule, the vessel owner's liability was in fact assumed by the statutory limitation proceeding. *The Benefactor*, 103 U.S. 239, 243. It is only the admiralty rule (now Supplemental Rule F(2)) that permits the vessel owner to seek exoneration.

The Eighth Circuit's characterization of exoneration as "more than just a procedural adjunct" to limitation (196 F.3d 900, 908) compoounds this error by elevating exoneration to the level of a substantive right in violation of the Rules Enabling Act (28 U.S.C. § 2072(b)) and this Court's decision in *Henderson v. United States*, 517 U.S. 654 (1996). The Rules Enabling Act's authorization of rules relating to procedure is limited by the provision that "[s]uch rules shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). To permit the vessel owner to pursue a right of action for exoneration to the exclusion of petitioner's rights under the Jones Act is to grant and abridge, respectively, substantive rights. This is specifically forbidden by the Rules Enabling Act.

The *Henderson* Court clarified the distinction between substance and procedure (and therefore what may properly be the subject of statute and rule, respectively) by defining substantive provisions as those which provide "who may sue, on what claims, for what relief, within what limitations period." *Henderson v. United States*, 517 U.S. 654, 671 (1996) (footnotes omitted). Applying this definition to the cause *sub judice* requires the conclusion

that Supplemental Admiralty Rule F impermissibly creates a substantive right to exoneration because it answers the questions:

> a) who may sue ("any vessel owner may file a complaint"), Rule F(1));
>
> b) on what claims ("[t]he complaint may demand exoneration from as well as limitation of liability"), Rule F(2);
>
> c) for what relief ("exoneration from . . . liability"), Rule F(2);
>
> d) within what limitations period ("Not later than six months after receipt of a claim in writing . . . . "), Rule F(1).

By creating a cause of action for exoneration, and even providing a limitations period, Rule F improperly exceeds the scope of rule-making authority conferred by the Rules Enabling Act. Respondent's argument (Brief In Opposition at pp. 6-7) completely ignores the historical background of the Limitation Act and the English admiralty rule prevailing before the adoption of the American Admiralty Rules. See *The Benefactor, supra*, 103 U.S. 239, 243.

Respondent cites to cases (Brief in Opposition at pp. 7-8) that in general language hold that limitation involves a two-step proceeding. *The 84-H*, 296 F. 427 (2d Cir. 1923); *Complaint of Consolidation Coal Co.*, 123 F.3d 126, 132 (3d Cir. 1997); *Complaint of Port Arthur Towing Co.*, 42 F.3d 312 (5th Cir. 1995); *Matter of Hechinger*, 890 F.2d 202 (9th Cir. 1989); *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032 (11th Cir. 1996). None of those cases stands for the proposition that the first of those steps can not be a trial in state

court on liability and damage issues. *Compare, Langnes v. Green*, 282 U.S. 531 (reversing finding of exoneration and ordering injunction against state court case dissolved).

The Limitation Act and the Jones Act apply equally to shipowners and seamen in New York Harbor, the Port of New Orleans and St. Louis Harbor. Considerations of maritime uniformity require that cases in each of these centers of maritime activity be treated similarly. The Eighth Circuit's decision has set up a different set of rules for cases filed in federal court in St. Louis than anywhere else in the country. This is especially significant because the venue rules allow the vessel owner to file its limitation claim "in the district where the vessel may be . . ." unless the vessel has been attached or the owner sued elsewhere. Supplemental Admiralty Rule F(9). This allows a vessel owner to circumvent the Fifth Circuit rule set forth in *Linton, supra*, 964 F.2d 1480, 1486-1487, simply by sailing its vessel up the Mississippi River and then instituting suit. The disruption of maritime uniformity in this circumstance is of grave proportions.

CONCLUSION

The Eighth Circuit's decision has caused a serious disruption in maritime uniformity. That decision conflicts with decisions of this Court on virtually every issue. That decision conflicts directly with decisions of the Second and Fifth Circuits in an area of significant national interest. The petition for writ of *certiorari* should be granted to

resolve this conflict and to restore uniformity to maritime law.

Respectfully submitted,

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